

TO MICHIGAN HOUSE HEALTH POLICY COMMITTEE HEARING 9-22-15  
CHAIR REP MIKE CALLTON

STATEMENT AND INFORMATION OPPOSING HB 4674-AOT REVISIONS, AND URGING REPEAL OF  
MCL 330.1401(c) and (d), AND URGING EXPLICIT STATUTORY PROTECTION (REVISING 330.1718)  
FOR THE COMMON LAW RIGHT TO INFORMED CONSENT AND CONSTITUTIONAL RIGHT TO  
REFUSE PSYCHOTROPIC DRUGS

The Constitutions require that 1401(c) and (d) be repealed immediately. 42 USC 241 prohibits retaliation for the exercise of Constitutional rights. Assault with harmful, fraudulent psychotropic drugs because of an assertion of the right to refuse the drugs, or because of an assertion of the equal protection of the law of informed consent, or because the recipient has vastly different views than the Doctor about the quality and value of the drugs at issue, is a felony crime.

Doctors who claim in court that objections to psychotropic drugs are unjustified and prove lack of understanding are frequently guilty of perjury. Doctors who make this claim out of court are frequently guilty of fraud. Most recipients who object to psychotropic drugs have very good reasons to do so.

The clinical certificates used to commit should not even be allowed into court as evidence under the Rules of Evidence MRE 401,402,403,702, and Daubert v M.D. Pharmaceuticals (1993) standards, and under due process and equal protection. The scientific/scholarly community overwhelmingly agrees that psychiatric predictions of dangerousness are very unreliable, have high error rates (often greater than 50%), cannot be tested for truth at the time provided to court, are easily falsified, are fraught with bias, and their probative value is substantially outweighed by unfair prejudice. No one seriously disputes that psychiatric predictions of dangerousness are much less reliable than polygraph evidence which is inadmissible in most states. Note, Ziskin and Faust, COPING WITH PSYCHIATRIC TESTIMONY (1988), the continued participation of psychiatrists "in the legal-process is a travesty." P.76.

Sufficient scrutiny also reveals that involuntary psychiatric exams should be prohibited to begin with under Constitutional protections of the right to remain silent and not to speak. Note, In Re Baker, 117 Mich App 583, Cavanagh dissenting, "If a respondent is really a danger... the state should be able to prove it through other means."

U.S. Fraud law applicable to the prescribing of APDs includes: 18 USC 1347, defrauding a health care benefit program, (including Medicaid and Medicare), 10 year felony, 20 year felony where bodily injury results, up to life in prison where death results. 18 USC 1035, 18 USC 287, 18 USC 1341,1343, 18 USC 1001, 18 USC 371, 18 USC 1518.

In investigating the medical/factual question of APD fraud the following questions should be answered: Do the drugs heal or harm the brain? Are the drugs neurotherapeutic or neurotoxic? Do the drugs make a person healthy or unhealthy? Do they enhance or diminish quality of life? Cause happiness or misery? Tranquility or distress? Cure or disable? Improve or impair mental functioning? The medical evidence is overwhelming that if any person objects to these drugs they have good reason to do so, and psychiatrists know it. I urge immediate investigation of, and corrective action on these matters.

Thank you. Sincerely,



Sean Bennett  
1011 Crown St, Kal. Mich. 49006  
734-239-3541

**LAWS AND PRACTICES SANCTIONING NON-CONSENSUAL DRUGGING ARE CONTRARY TO HONEST EVIDENCE-BASED MEDICINE AND UNCONSTITUTIONALLY MEDICALLY INAPPROPRIATE**

One Constitutional requirement for non-consensual, assaultive psychiatric drug prescribing is that the drugs must be medically appropriate for that individual. Sell v U.S., 539 US 166, Riggins v Nevada, 504 US 127. The drugs must be medically beneficial. The drugs must not be counter-therapeutic. If the drugs are harmful rather than helpful then forced drugging may also constitute malpractice and fraud. Drugs which cause, instead of alleviating, illnesses, suffering and distress must not be forced on patients against informed consent. Michigan statutes, practices, and policies (MCL 330.1401) which force patients to suffer harmful or worthless psychiatric drugs, abuse medicine, abuse vulnerable persons and violate Constitutional, statutory and common law. Law-makers should be cognizant of the medical facts mandating reform of Michigan mental health laws.

Because 50%+ of the persons prescribed antipsychotic drugs will not be helped by the drugs, and psychiatrists do not have the ability to predict whether or not the drugs will be beneficial to any given individual, and generally only the patient can know and decide whether the drugs are helping or harming that person, policies which override the right of all persons to decline psychotropic medications are patently unconstitutional. If the drugs are just being used to disable a person from being dangerous without medical benefit then forced drugging must be limited to very short term 1-3 days. The requirement that medical personnel determine that there is an imminent danger of harm cannot be overemphasized. The police power may not be asserted broadly to justify keeping patients on antipsychotic drugs to keep them docile and thereby avoid potential violence. Furthermore, the medication must be medically appropriate for the individual and it must be the least intrusive means" Steele v CMH Board, Ohio, 736 N.E.2d 10. Michigan's recipient rights statute on psychotropic drugging (330.1718) only prohibits non-consensual drugging the day before and the day of the court hearing. And even here the law is deficient on medical facts. Schultz et al, Persistence of Haloperidol in Human Brain Tissue, American Journal of Psychiatry, June 1999.

The supposedly new and improved, and much more expensive, 2<sup>nd</sup> generation antipsychotic drugs have been found not beneficial for persons over 40 years old [not medically appropriate], regardless of drug or diagnosis. The drugs proved lacking in both safety and effectiveness. D.Jeste (past president American Psychiatric Association), et al, Journal of Clinical Psychiatry, Jan. 2013. The landmark NIMH funded CATIE 1 study concluded that the 2<sup>nd</sup> generation APDs drugs were no more safer and effective than the older APDs, and were intolerable or ineffective for the majority of those prescribed. [Lieberman, et al, New England Journal of Medicine, Sept. 2005. Leucht, Arbter, et al, Journal of Molecular Psychiatry, 2009, Meta-analysis confirmed about 60% of patients did not gain any benefit from 2<sup>nd</sup> generation APDs.

But for many persons psychotropic drugs are far worse than just ineffective, APDs have proven extraordinarily harmful to both mental and physical health. The drugs have long been known to cause severe anxiety, distress, mental impairment, depression, exacerbate psychosis, and even damage the brain. Peter Breggin, Brain Disabling treatments in Psychiatry, 2008. Joanna Moncrieff, The Bitterest Pill: The Troubling Story of Antipsychotic Drugs, 2013. The drugs cause misery, distress, diminished functioning and quality of life for about 50%, VanPutten and Marder, Behavioral Toxicity of Antipsychotic Drugs, Journal of Clinical Psychiatry, Sept 1987. APDs can cause suicidal depression, Peter Lehmann, About The Intrinsic Suicidal Effects of Neuroleptics, International Journal of Psychotherapy, 2012. APDs often worsen psychosis, Psychopharmacology, July 2013, Review of Cases Involving Psychotic Symptoms Worsened by Abilify, Rosebush, Neurology, March 1999, "The incidence and severity of dystonic reactions, akathisia, parkinsonism, and dyskinesia were comparable in the risperidone and haloperidol treated groups." Both 1<sup>st</sup> and 2<sup>nd</sup> generation APDs cause brain atrophy. Neuropsychopharmacology, March 2005. 44% of patients consuming APDs in study died within 10 years, Waddington, et al, British Journal of Psychiatry, 1998. Serious adverse health problems or death are much more frequent among older adults, 65 when prescribed APDs, Rochan, et al, Archives internal Medicine, 2008. Grace Jackson, Drug-Induced Dementia: A Perfect Crime, 2009.

## ANTIPSYCHOTIC DRUGS, THE 1<sup>ST</sup> AMENDMENT, MEDICAL FRAUD AND OBSTRUCTING JUSTICE

Non-consensual antipsychotic drugging is, in addition to medical fraud, a most serious abridgment of 1<sup>st</sup> Amendment liberties, including: the freedom of speech, thought, expression, belief, association, religious exercise, access to the courts, and the right to petition government for redress of grievances. Note, Bruce Winik, The Right To Refuse Treatment: A First Amendment Perspective, 44 U. Miami Law Review, 1. "Antipsychotic drugs have the capacity to severely and even permanently affect an individual's ability to think and communicate." US v Brandon, 158 F3d 947 (6<sup>th</sup> Circuit). Once a person is committed to a hospital, and are not dangerous within the facility, then forced drugging massively violates the 1<sup>st</sup> Amendment's Overbreadth Doctrine, U.S. v Stevens (2010), Erznoznik v Jacksonville, 422 US 205. Forced drugging also violates the Constitution's Least Restrictive Means Test, Shelton v Tucker, 364 US 479, Bee v Greaves, 744 F2nd 1387, Brandon Id., since 24 hour a day, week on end, APD drugging is a most intrusive, rather than least restrictive infringement. Most 1<sup>st</sup> Amendment violations, such as the removal of a few books from a middle school library, Board of Educ. V PICO, 457 US 853, pale in comparison to the mental impairment and brain damage caused by forced psychotropic drugging. Psychiatrists will typically deny the drugs invade 1<sup>st</sup> Amendment guarantees, and attribute patient's complaints about antipsychotic drugs to the patient's own psychosis or mental illness, thereby obstructing, and retaliating against, a patient's honest offering of evidence in a legal matter, with intentional false statements about the effects of the drugs, and about the veracity of the patient. Justice is also obstructed, and the right to court access also abridged, when forced drugging impedes an involuntary recipient's ability to defend themselves in court, safeguard their rights, appeal, sue, prove themselves not mentally ill, or secure release. Note, Bounds v Smith, 430 US 817, Bieregu v Reno, 59 F3rd 1443. Contrary to what psychiatrists would have us believe non-consensual antipsychotic drugging often exacerbates a mental illness, makes people mentally ill, or makes people appear so, thus tainting legal evidence. Honest scientific/scholarly literature clearly indicates that Michigan's forced drugging laws and psychiatrists who act pursuant to them violate the Constitution(s), commit medical fraud, and obstruct justice. It is time for MCL 330.1401 to be immediately reformed to protect the right of informed consent for psychiatric treatments.

Neuropsychopharmacology, K.A. Dorph-Petersen, et al., March 2005: Both first and second generation antipsychotic drugs shrink the brains in monkeys 8-11%, with frontal and parietal lobes shrinking 11-15%

Nature Neuroscience, H. Tost, et al., June 2010: A single dose of a commonly prescribed APD shrinks the brain within hours of administration. "This is the fastest change in brain volume ever seen."

British Journal of Psychiatry, Aug. 1977: Single dose of APD caused "marked slowing of thinking", "profound cognitive restriction", "severe anxiety" and they could not continue work.

Law, Behavior, and Mental health Policy, Smith and Meyer, 1987: APDs may make "reading, talking, and social interactions difficult or impossible."

Molecular Brain Research, R. Castro, et al., Oct. 1994: APDs "induce long-term deleterious effects in offspring development when administered prenatally."

Lancet, A.L. Madsen, et al., Sept. 1998: APDs caused brain shrinkage/atrophy.

Lars Martinson M.D., Should Neuroleptic Drugs Be Banned?, 1985: APDs cause "serious and certain brain damage."

Gary Kohls M.D., Mental illness Epidemic: Drugs Are The Problem, 2010: APDs cause "cognitive disorders, brain damage, loss of creativity, loss of spirituality, loss of empathy, loss of energy, loss of strength, fatigue and tiredness, permanent disability, ... increased depression, anxiety, psychosis."

Fred Baughman M.D., Psychiatry Is Not A Medical Practice, 2010: Instead of helping people, psychiatrists use drugs to damage our main organ of adaption-the brain-and call it treatment. Psychiatrists are guilty of a harmful health care fraud.

USA Today Magazine, T. Bibeau, Psychiatric Drugs Kill The Lives of Those Who Take Them, May 1994: APDs have long been known to ruin lives instead of curing illnesses. The drugs can cause psychosis, destroy mental functioning, and make people mute and disabled.

Quarterly Journal of Medicine, B. Charlton, M.D., Why Are Doctors Still Prescribing Neuroleptics?, 2006: APDs should be "replaced by gentler and safer sedatives." "APDs are dangerous, unpleasant, and suppress behavior rather than cure illnesses. The medical truth represents a disaster for the reputation of psychiatry."

Neuroscience, Milstein, et al., Nov. 2010: Animal experiments indicate exposure to APDs in fetal life or early childhood "produces long-term behavioral dysfunction."

Lawrence Stevens J.D., Psychiatric Drugs: Cure or Quackery?, 1997: APDs damage the brain clearly and permanently. It is "criminal" to use these drugs on mental patients, and "a crime worse than rape" to force them on patients against their consent. APDs cause "misery- not tranquility", "they blot out a person's ability to think and act", but "this is disabling people, not therapy".

On the question of whether the State of Michigan should be working to protect or disregard the individual's **fundamental** constitutional right (and the right of informed consent) to refuse counter-therapeutic, **harmful**, fraudulent, costly, forced/non-consensual psychiatric drugging and other medically intrusive treatments.

1. Our constitutional law requires that laws and policies which infringe upon fundamental liberties be presumed unconstitutional and subjected to strict scrutiny.
2. Antipsychotic drugs, the leading drug prescribed to persons with serious mental illnesses, not only can cause great mental impairment, the drugs can damage the brain, and can cause a vast array of physical and mental harms and suffering.
3. Forced psychotropic drugging invades a person's most sacred personal interests and fundamental liberties including freedom of thought, court access and participation, political communications, social engagement, religious exercise, education, work, privacy, bodily integrity, quality of life and pursuit of happiness.
4. Antipsychotic drugs very often cause mental illnesses including serious anxiety and psychological distress, severe depression, and worsen psychosis.
5. APDs have no therapeutic benefit for the majority persons prescribed the drugs.
6. Doctors have no ability to predict whether the drugs will be beneficial or harmful. Only the consumer of the drugs can know if the drugs are beneficial or the contrary.
7. Most persons with serious mental illnesses do know they have an illness.
8. In light of the medical facts and our legal standards, non-consensual psychiatric drugging (except for 1-3 day dangerousness emergencies) frequently constitutes criminal abuse, criminal fraud, criminal assault, and a criminal violation of civil rights.
9. Every person who under color of any law of any state subjects any citizen of the US to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws shall be liable in an action at law for redress. Persons who conspire for the purpose of depriving any person or class of persons the equal protection of the laws or the equal privileges and immunities shall also be liable for damages. Persons who knowingly neglect to prevent such conspiracies may also be held liable. 42 USC 1983, 85, 86. Obviously Legislators should not be supporting laws or policies which deprive vulnerable persons with mental disabilities their equal rights or liberties.
10. Legislators most urgently needs to obtain honest truthful medical facts to make and to evaluate mental health policy. Uncorrupted, accurate evidence-based research literature, the personal accounts of those who have consumed psychiatric drugs, and the shameful history of psychiatry, leave us with no doubt that patients not doctors should have the final say on the consumption of psychiatric drugs and other medically intrusive treatments.

## MICHIGAN MENTAL HEALTH CODE SHOULD BE REVISED TO ENSURE THAT ILLEGAL MISCONDUCT IN PSYCHIATRIC COMMITMENT CLINICAL CERTIFICATIONS/EXAMINATIONS IS SUBJECTED TO CIVIL LIABILITY

A most important right for these vulnerable persons is the right to avoid being illegally committed to a psychiatric facility. This right is especially important in Michigan where committed patients are unable to refuse non-consensual psychiatric drugging. Unfortunately, Michigan is also among the very worst states in protecting the right of persons not to be illegally and unconstitutionally committed. Michigan should revise the Mental Health Code to ensure civil liability for psychiatric commitment certifications. Most of the other states have statutes that hold liable negligent or intentional misconduct in psychiatric commitment evaluations/certifications.

Civil justice is crucial to both deterring wrong-doing and remedying injury. In Michigan, the judiciary has improperly deprived persons subjected to illegal commitment certifications the right to sue for redress by creating an absolute immunity from liability even for intentional wrongs, Dabkowski v Davis, 111 NW2d 68, (1961). The judiciary in other states such as New York and New Jersey have recognized no such immunity, and hold physician certifications to a negligence/medical malpractice standard. The creation of the absolute immunity in Michigan was especially improper given the notorious unconstitutionality of psychiatric commitment proceedings and the history of abuse.

Most states stipulate that commitment exams/certifications are actionable for either negligence or gross negligence/willful misconduct. Absolute immunity means that those who abuse the commitment power cannot be sued no matter how harmful, obvious, corrupt, abusive, unconstitutional, malicious or frequent the misconduct. Absolute immunity results in a catastrophic theft of the individual's rights. Malpractice, intentional torts including, abuse of process, assault and battery, false imprisonment, fraud, malicious prosecution, privacy, and all constitutional claims are all eliminated by absolute immunity. Michigan judges have no legitimate authority to make or unmake laws, or make special exceptions in the laws, unless a law conflicts with the constitution. Can you imagine judges ignoring shockingly unconstitutional laws and instead making laws which allow select groups of persons to evade the laws and constitutional accountability, contrary to constitutional rules- such as equal protection of the laws, and repugnant to our principles of liberty and justice for all, and the rule of law. The immunity set forth in Dabkowski v Davis is an abuse of judicial power and a perversion of the common law. Note, Mich. Const. Art. III 2 (judicial branch shall not exercise legislative powers), 7 (Common law repugnant to the constitution invalid). Note also Michigan's first constitution Art. I 21 "All acts of the legislature contrary to this [Bill of Rights] or any other article of this constitution shall be void."

The public policy debate over absolute immunity is properly ended by the fact that the other states have proven that obstructing justice for these victims of psychiatric abuse is completely unnecessary. The debate is about whether law and justice are wiser than no law or justice, and whether it is wise to keep those wielding great powers over the lives and liberties of others accountable to the law. Careful examination of the history psychiatric commitments throughout the U.S. indicates liability is in the public's interest. The real policy problem is that lawyers shy away from wrongful commitment cases no matter how meritorious.

Sincerely,



Sean Bennett Civil Rights Advocate  
1011 Crown St., Kal. Mich 49006  
734-239-3541

## OTHER STATES MENTAL HEALTH CODE CIVIL LIABILITY STATUTES

**Illinois 405-5/6-103** "All persons acting in good faith and **without negligence** in connection with the preparation of applications, petitions, certificates or other documents, for the apprehension, transportation, examination, treatment... incur no liability."

**California GC 856** "A public employee is not liable for carrying out **with due care** a determination of whether to confine a person for mental illness." "Nothing in this section exonerates a public employee from liability for injury proximately caused by his **negligent or wrongful act or omission** in carrying or failing to carry out a determination to confine or not confine a person for mental illness."

**Florida 394.459(10)** "Any person who violates or abuses any rights or privileges of patients provided by this part is liable for damages as determined by law. Any person who acts in good faith in compliance with the provisions of this part is immune from civil or criminal liability for his or her actions in connection with the admission, diagnosis, treatment, or discharge of a patient to or from a facility. However, this section does not relieve any person from liability if such person commits **negligence**."

**Tennessee 33-3-901** "All persons acting in good faith, reasonably and **without negligence** in connection with the preparation of petitions, applications, certificates or other documents or the apprehension, detention, discharge, examination, transportation or treatment of a person under this title shall be free of all liability."

**Delaware 16-5004** No medical doctor shall be subject to civil damages for psychiatric certification unless such harm was the result of **negligent, reckless, willful, wanton and/or intentional misconduct**.

**North Dakota 25-03.1-42** A physician or psychiatrist who in good faith exercises professional judgment in fulfilling an obligation under this chapter is not subject to liability unless it was done in a **negligent** manner.

**Kansas 59-29b80** Any person acting in good faith and without **negligence** pursuant to the act shall be free from liability.

**Kentucky 202A.301** Persons carrying out duties or rendering professional opinions in this chapter shall be free of liability for such actions, provided that such activities are performed in good faith within the scope of their professional duties and in a manner consistent with accepted **professional practices**.

**Texas 7-571.019(b)** A physician performing a medical examination and providing information to the court in a court proceeding held under this subtitle is considered an officer of the court and is not liable for the examination or testimony when **acting without malice**.

**Rhode Island 40.1-5-41** No physician shall be made to answer in any court for his or her participation in any proceeding under this subchapter except upon a showing of actual **fraud**.

**Oregon 426.335(4)** No person appointed to conduct an examination report shall be held liable if the examiner acts in good faith and **without malice**.

### Michigan MENTAL HEALTH CODE (EXCERPT)

Act 258 of 1974

#### 330.1439 Cause of action against person filing petition.

Sec. 439. A cause of action shall not be cognizable in a court of this state against a person who in good faith files a petition under this chapter alleging that an individual is a person requiring treatment, unless the petition is filed as the result of an act or omission amounting to gross negligence or **willful and wanton misconduct**.

#### 330.1427b Liability of peace officer.

Sec. 427b. (1) A peace officer who acts in compliance with this act is acting in the course of official duty and is not civilly liable for the action taken.

(2) Subsection (1) does not apply to a peace officer who, while acting in compliance with this act, engages in behavior involving gross **negligence or wilful and wanton misconduct**.